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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,866	02/20/2004	Glen S. Axelrod	TFH063	7526

7590 10/16/2006

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55 South Commercial Street  
Manchester, NH 03101

EXAMINER
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SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/783,866

Applicant(s)

AXELROD, GLEN S.

Examiner

C. SAYALA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/18/04, 3/6/06</u>   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 4-8, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. (US Patent 6493641).

Singh et al. teach providing a consumer with a bag of dry food base, a bottle of customized sauce, and a custom selected spoon for measuring-scoop for measuring the sauce into food bowl and a customized measuring-scoop for the dry kibbles. The consumer measures the sauce, the kibbles and mixes the appropriate amounts for the pet. See col. 15.

At col. 13, lines 34-67, patentees show that the sauce or additive can also alternatively be a powder, a coating, a thickener, a topping or gravy or mixtures of the above. The additive is said to contain vitamins and minerals at typically less than 1% of the formulation. Patentees show that "for vitamins and minerals that need to be protected from high thermal processing such as extrusion, the vitamins and minerals are added to the additives instead". The vitamins suggested: E and C. In addition, at col. 14, lines 18-26, patentees state:

Other specialized micronutrients, as they are discovered for their effect in pet nutrition can also be delivered through the additives as a delivery mechanism. For example, fish oil as a source of omega three fatty acids for healthy skin and coat, is included in the additives in the required quantities (such as

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between 0 and 5%). Alternatively, sodium acid pyrophosphate for dental and skeletal health is included in the additives in the required quantities (such as between 0 and 5%).

2. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. in view of Vita-Gravy (downloaded from <http://www.petpro-products.com>, Dec 11, 2001) or Torney et al. (US Pub 2003/0194423) and further in view of Axelrod et al. (US Patent 6586027).

The patent to Singh et al. is as described above. It does not teach the minerals claimed in instant claim 9, although the patent discloses minerals in the additive and these minerals are all well-known. The patent also does not disclose the herbs of claim 10. Vita-Gravy teaches a flavor topping that also provides nutrients to the pet food. Page 8 discloses the minerals. Torney et al. also teach a flavoring composition that supplements the nutritional content of a pet food. See paragraphs [0070] and [0085] which disclose minerals and herbs as functional ingredients, respectively. Axelrod teaches specific herbal ingredients as well as minerals, that are useful in pet food products and to incorporate these in Singh et al. would have been obvious based on their usefulness. See col. 3, lines 45-67.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sing et al. in view of Brandt et al. (US Pub. 2004/0029974).

The patent is as discussed above. It does not teach that the packaging used for the food supply to the consumer was in a plastic container that contains UV absorbers.

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Brandt et al. teach that such packaging was known in the art at the time the invention was made. See page 2, paragraph [0020], and paragraph [0017], wherein the reference shows that the packaging can be used for animal feeds including for dogs, etc. For the benefit of preserving the efficacy of heat- and radiation-sensitive vitamins and mineral, the use of such packaging would have been beneficial as well as obvious.

4. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. in view of McCulloch et al. (US Patent 4020187) or Brown et al. (US Patent 5894029) and further in view of Addy (US Patent 6379727).

The patent does not teach the heat and shear conditions recited in these claims although Singh et al. recognizes that vitamins and minerals need to be protected from high thermal processing such as extrusions. The specification admits that prior art products are "typically prepared" by processes involving heating and shearing that leads to degradation of vitamins in such products. Brown et al. teach at col. 6, lines 10-20, that pet food-products are manufactured by heating and shearing at the conditions claimed. McCulloch et al teach the claimed heat and shear conditions at col. 2, lines 1-5. As for packaging the separate packages of base pet-food and the additive together, Addy et al. teach this feature as stated below, at col. 4, lines 19-23:

The pet food variety flavor pack of this invention may include a package of pet food, such as a dog food or cat food, for example an unflavored pet food such as that prepared in accordance with Example 8.

The patent teaches packaging various flavor additives in separate packages and included with a package of pet-food. The flavor additive is included with a seasoning

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shaker or spray bottle and the flavor additive in a powder form, and is packaged in foil, paper, plastic etc. and sealed to prevent loss of volatile components. See col. 2 and claims 1-4. It would have been obvious to package the dry pet-food package and the additive package together, just for the convenience afforded to the consumer as taught by Addy et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
C. SAYALA



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Primary Examiner  
Group 1700.